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SUBJECT: Dual Compensation - Retired Officers

RE: Dalton v. U. S., 71 Ct. Cl. 421 (1931)**OGC HAS REVIEWED.**

1. Dalton was a retired Brigadier General, drawing an annual pension of \$4500 for thirty seven years service. He was hired at a salary of \$18,000 a year as president of the U.S. Shipping Board Emergency Fleet Corporation.

2. The U.S. Shipping Board Emergency Fleet Corporation was organized under authority granted in Section 11 of an Act of Congress, 7 September 1916 (39 stat 728), and incorporated as a private corporation under the laws of the District of Columbia.

3. Dalton sued the government for the pension denied him by the Army for the period he was an officer of the Corporation.

4. The Court of Claims, in finding for the Plaintiff, held:

a. That the "office" prohibition of the Dual Compensation Acts, referred to an office of the United States, a public station or employment established or authorized by Congress and conferred by appointment of the Government. The prohibition of dual office holding is directed at offices of the United States.

b. The corporation was organized under the general laws of the District of Columbia, as a private corporation with power to purchase, construct, and operate merchant vessels. The corporation is an entity distinct from the U.S. and from any of its departments and boards; the purpose was to enable this business of national importance to be transacted for, but not by, the Government, as such a business would be conducted by a person or private corporation having full power and the utmost freedom of action unhampered by the numerous restrictions relating to conduct of Government business.

c. The corporation although the U.S. owned its stock, had the power and liberty of action of other corporations, including the power to employ and discharge at will all operating officials and employees.

5. No limitation has ever been placed upon the number of employees of the corporation or the salary or compensation thereof except, beginning with the appropriation act of 1923, 42 stat 648, and repeated with slight modifications in the subsequent appropriation acts, it was provided that: "No officer or employee of the U.S. Shipping Board or the U.S. Shipping Board Emergency Fleet Corporation shall be paid a salary or compensation at a rate per annum in excess of \$10,000 except the following: one at not to exceed \$25,000 and seven not to exceed \$18,000 each."

6. Courts with only one exception (for purpose of reduced rates on telegrams within meaning of the post roads act of July 24, 1866) have held that the U.S. Shipping Board Emergency Fleet Corporation is a private corporation and not a part of the government.

7. The court referred to U.S. v. Strang, 254 U.S. 491, which held, regarding the same corporation: "The corporation was controlled and managed by its own officers and appointed its own servants and agents who became directly responsible to it. Notwithstanding all its stock was owned by the U.S., it must be regarded as a separate entity. Its inspectors were not appointed by the President, nor by any officer designated by Congress; they were subject to removal by the corporation only and could contract only for it. In such circumstances we think they were not agents of the U.S. within the true intendment of Section 41".

8. A further test enumeration by the Court: "The acts of the Emergency Fleet Corporation are not subject to supervision, control, or audit by the Comptroller General of the U.S."

9. U.S. v. Monat, 124 U.S. 303, is cited: "What is necessary to constitute a person an officer of the U.S., in any of the various branches of its service, has been very fully considered by this court in U.S. v. Germaine, 99 U.S. 508. In that case it was distinctly pointed out that under the Constitution of the U.S. all its officers were appointed by the President, by and with the consent of the Senate, or by a court of law, or the head of a department; and the heads of the departments were defined in that opinion to be what are now called the members of the cabinet. Unless a person in the service of the Government, therefore, holds his place by virtue of an appointment by the President, or of one of the courts of justice or heads of departments authorized by law to make such an appointment, he is not, strictly speaking, an officer of the U.S."